



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

EVAN BRUSTEIN
Senior Counsel
Tel.: (212) 356-2651
Fax: (212) 356-3509
ebrustei@law.nyc.gov

June 20, 2017

BY ECF

Honorable Cheryl L. Pollak
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Nchewi Akpoke v. City of New York, et al.,
15-CV-6960 (ILG) (CLP)

Your Honor:

I am a Senior Counsel in the Special Federal Litigation Division of the New York City Law Department handling the defense of the above-referenced matter on behalf of defendants City of New York, Sergeant Michael Dicecco, Police Officer Robert Hesterhagen and Police Officer Daniel Golat (hereinafter referred to collectively as "Defendants"). I write, with the consent of plaintiff's counsel, Ryan Lozar, Esq., to respectfully request a status conference with plaintiff present to discuss withdrawal of this action. I further write to oppose plaintiff's motion for additional discovery.

By way of background, plaintiff alleges that during a lawful car stop, his vehicle was excessively damaged. On May 12, 2017, plaintiff informed the Court that he had voluntarily discontinued his excessive force claim. The only claims that remain in this action are unlawful search, failure to intervene, and municipal liability. At the May 16, 2017 Status Conference, plaintiff agreed that discovery was complete. Your Honor then, gave plaintiff until June 16, 2017 to decide if he wished to withdraw the remaining claims in this action and told counsel that if Mr. Lozar could not convince his client to withdraw, the Court would be willing to discuss the matter with plaintiff. On June 16, 2017, plaintiff filed a motion requesting an extension of time to file a briefing schedule and advised the Court that plaintiff was not withdrawing the remaining claims. On June 17, 2017, plaintiff filed under seal a motion to compel certain documents without redactions. On June 20, 2017, plaintiff provided a copy of this motion to Defendants.

In light of the foregoing, Defendants respectfully request that the Court schedule a Status Conference, with plaintiff Nchewi Akpoke present, to discuss the merits of his remaining

claims, in the morning of June 29, 2017, in the afternoon on July 5, 2017, when counsel for both parties are available, or at any date and time convenient for the Court.

With respect to plaintiff's request for unredacted copies of all of the produced disciplinary records for all of the individually-named defendants, Defendants submit that this request is untimely based upon plaintiff's representation that discovery was complete, not proportional to the needs of the case considering the amount in controversy, as plaintiff conceded that plaintiff has no monetary damages as a result of his claims, not relevant to any party's claims or defenses as there has been no discovery in this action, which could support a claim for municipal liability, to the extent the information is protected from disclosure by the law enforcement and/or official information privileges because the files contain information relating to complaining witnesses and non-party police officers, to the extent that it calls for information reflecting charges of misconduct that were not substantiated or did not result in a finding of wrongdoing, that do not involve allegations of a similar nature or false statement, and to the extent it implicates the privacy rights of non-parties and the sealing provisions of HIPAA and/or NYCPL 160.50 and 160.55. As the information sought is deemed confidential by Defendants, should the Court consider plaintiff's untimely motion, Defendants respectfully request the opportunity to address this issue with more specificity, at any conference that may be scheduled as a result of this application.

Defendants thank the Court for its consideration of the within matters.

Respectfully submitted,

/s/

Evan Brustein
Senior Counsel
Special Federal Litigation Division

cc: Ryan Lozar, Esq. (By ECF)
Attorney for Plaintiff